

**Modus tenendi Parliamentaria
& Consilia in Hibernia.**

Published out of an Antient
Record by the Right Re-
verend Father in God
ANTHONY, Lord Bi-
shop of **MEATH**.

To which is added the Rules
and Customs of the House,
Gathered out of the Journal
Books from the time of *Ed-
ward* the Sixth.

By *H. S. E. C. P.*

DUBLIN, Printed by *Andrew Crook* Af-
signee of *Ben. Tooke*, Printer to Their Ma-
jesties, and are to be Sold at his House on
Ormonde-Key, and by the Booksellers of
Dublin.

62
5717210
301277

JW 1467
M6

The Preface to the Reader.

Good Reader,

THe news of an approaching Parliament in this Kingdom has invited me to the Publication of this Antient Record concerning the manner of holding Parliaments in *Ireland*, which, if I am not much mistaken, is the very Original Record said by my

Lord Cook to have been in the custody of 4 *Instit.*
Sir Christopher Preston in the 6th. of Hen. 4. f. 12.

It came to my hands among other Manuscripts and Papers of my ever Honoured Uncle Sir William Domville, late Attorney General in this Kingdom, which he was pleased to bequeath as a Legacy to me, and he told me in his life time upon an occasional discourse concerning it that it was bestow'd on him by Sir James Cusse, late Deputy Vice-Treasurer of *Ireland*, that Sir James found it among the Papers of Sir Francis Aungier, Master of the Rolls in this Kingdom, and Sir Francis his Grandson, the Right Honourable the Earl of Longford has lately told me that Sir Francis had it out of the Treasury of *Waterford*.

I am not ignorant of the disputes between my Lord Cooke and Mr. Prynne concerning the Antient manner of holding Parliaments in *England*, of which this is said to be a Transcript, the former affirming it to be a genuine piece of Antiquity, as Antient as the time of Edward the Confessor, the latter re-

puting it as spurious and no older *Prim. antiwad.*
then the Reign of King Henry 6th. page 6.
nor that the most learned Mr. Selden in his Titles of Honour hath de-

cried it as a late imposture of a bold fancy not exceeding the Reign of King Edward the Third, but as I am not concern'd to vindicate the antiquity of the *English Modus*, so I shall not ingage my self in that Dispute, but shall only offer to the Reader, some considerations to justify the antiquity and genuineness of our *Irish Modus*. It

Preface to the Reader.

It is affirm'd by my Lord Cook 4th. Institut. f. 12. that after King Henry the Second had Conquered Ireland, that he fitted and Transcribed the *English Modus* into a Parchment Roll for the use of Ireland, that this Parchment Roll so transcribed remained in Ireland, that in the Sixth year of King Henry 4th. it was in the custody of Sir Christopher Preston a man of great Wisdom and learning, that in the same year *de assensu Johannis Talbot*: His Lieutenant there, and of His Council of Ireland King Henry 4th. exemplified it for the better holding of Parliaments in Ireland, and that it expressly appears in the exemplification that King Henry 2d. did transcribe this *Modus*, as aforesaid, To which give me leave to add these following particulars.

1. That it is affirmed by Historians of good credit that William the Conqueror did in the 4th. year of his Reign by the advise of his Barons Summon an Assembly of Noble Wise and Experienced Persons in the Laws of England, *ut eorum & jura & consuetudines ab ipsis audiret* that he might know what were their antient Laws and Customs, that 12 Men were Elected out of each County, who took an Oath *ut quoad possent recto transmise neq; ad dextram neq; ad sinistram partem divertentes legum suarum consuetudinem sancta patefacerent nihil pratermittentes nihil addentes nihil pravaricando mutantes*. And accordingly it appears by *Matb. Paris* that the Conqueror did confirm those Laws to them with some Emendations: *Legam Regis Edwardi vobis reddo* (sath he) *cum illis emendationibus quibus pater meus eam emendavit cum consilio Baronum suorum*.

2. That a Copy of the exemplification mentioned by my Lord Cook was communicated to Mr. Selden by Mr. Hakewell of *Lincolns-Inn*, and is to be found in his
Titles

Preface to the Reader.

Titles of Honour, wherein an express mention is made that *Henry part 2 c. 5 sect. 26.* Lord and Conqueror of *Ireland* did sent such a *Modus* into this Kingdom, and because that book of Mr. *Seldens* is not readily had I shall therefore for the ease of the Reader transcribe that passage out of it. The stile whereof runs thus,

Henricus dei gratia Rex Anglie & Francie & Dominus Hibernie omnibus ad quos presentes literę pervenerint salutem. Inspeimus tenorem diversorum Articulorum in quodam rotulo pergameneo scriptorum cum Christophero de Preston milite tempore arrestationis sue apud villam de Clune per Deputatum dilecti & fidelis nostri Johannis Talbot de Halonschire Chivalieri locum nostrum tenentis terre nostre Hibernie nuper facta inventorum ac coram nobis & Consilio nostro in eadem terra nostra apud villam de Trym. Nono die Januarii ultimo præterito ostensorum in hæc verba. Modus tenendi parliamenti. Henricus Rex Anglie Conqueror et Dominus Hibernie mittit hanc formam Archiepiscopis Episcopis Abbatibus prioribus Comitibus Baronibus Justiciariis Viccomitibus Majoribus prepositis et omnibus fidelibus suis terre Hibernie tenendi Parliamentum Impiunis summonitio parliamenti precedere debet per quadraginta dies et.

Now I think it hardly credible that an exemplification would have been made so solemnly of it by King *Henry 4.* that it should refer to a *Modus* Transmitted in *K. Henry 2d's* time, and affirm that it was produced before the Lord Justice and Council at *Trym* if no such thing had been done, this were to call in question the truth of all former Records and Transactions, and make the exemplification to contain an egregious lye in the body of it.

3 That the Character, Ink and Parchment are all so many Arguments for the Antiquity of it, and may convince any Person that is unprejudiced in the controversy, that it could not be so late as the time of *K. Hen. 6.*

4. That there are several internal Arguments contained in the body of the Record that prove it to have

Preface to the Reader.

been composed and transcribed in the Reign of King Henry 2d. as 1. That in the preamble he is stiled *Conquestor Hibernie*, which is a Title only proper to himself, for altho' he fought no Battle in this Kingdom, nor reduced the *Irish* by force of Armes, yet the bare news of his presence, and the report of the Forces he brought over with him did open as fair and ready a way to the Submission of the *Irish* as if he had conquered them with his sword. 2. That in the Title *Sessiones in Parlamento* mention is made of the 4 Archbishops of *Armagh, Dublin, Cashell* and *Tuam* who had received their Palls and took on them the fixed names of those places not above 20 years before the Conquest of King Hen. 2. being formerly stiled by the names of their respective Provinces. 3. That in the last Title *de constitutione Justitiarum* mention is made of the *procurator terra*, which was one of the stiles given to the Kings chief Governour of Ireland in the Reign of King Hen. 2d. but disused in after times when the names of *justitarius & locum tenens Hibernie* became more frequent; thus William Fitz Adelin was sent into Ireland 23 of King Hen. 2d. Anno Dom. 1177 by the name of *Procurator Regis* and in the year 1184 which was the 30th. of K. Hen. 2d. Philip de Braose was sent *Procurator in Hiberniam*, saith Roger Hoveden.

4. That upon the Authority of this last Title which grants a Liberty of choosing a Justice for the Kingdom in the absence of the King or his Procurator we find that immediately upon the death of Earl Strangbow the Council chose *Reymond le Grosse* to Govern the Kingdom till the Kings pleasure should be known, which in all probability they would not presume to do unless the Kings permission had authorized the fact as well as the necessity of their Affair obliged them to it.

Having said thus much in justification of our *Irish Modus* it may now seem reasonable to take into consideration the several exceptions of Mr. Pryn in 1. 2. 3. &c. his Animadversions, but because the most that is there offered doth relate to the
Anti-

Preface to the Reader.

Antiquity of the *English Modus*, and there is nothing objected against the credit of the Record which I have published (which I believe was never seen by that learned and industrious Antiquary) further then as it agrees in some passages with the *English Modus* and where they agree in the Substance, yet there are such material differences in the manner of expressing it (as any one may perceive that will take the pains to compare them together) I shall therefore spare the Readers pains in making any remarks upon them having no other aim in the publication of this then to stir up the endeavours of the learned Searchers into Antiquity to find out the true Original and date of this Record.

There are only one or two things more that are necessary to be added for the Readers satisfaction. 1. That in the Section or Title *de Judicij casus dabij* there seems to be some omission of words which makes the sense Imperfect, and may easily be supplied out of the *English Modus*, viz. after the words *Et ipsi sex intres adde Et hi tres in unum condescendere qui a seipso. &c.*

2 That in the last Section *de constitutione Justitiarum*, after the word *conferatur*, there should be added *constitutus Justitiarius per Consilium*, but tho' these defects are observable in the Record, yet I thought it not convenient to insert them in their proper places, because I did believe it inconsistent with the integrity of a Transcriber to add or alter any thing in the Original.

A. Midenf.

Modus

Modus tenendi Parliamenta & Consilia in Hibernia.

Henricus Rex Anglie Conquestor & Domi-
nus Hibernie, ac Mittit hanc formam
Archiepiscopis Episcopis Abbatibus
Prioribus Comitibus Baronibus Ju-
ditiariis vicecomitibus Majoribus prepositis Mini-
stris & omnibus fidelibus suis terre Hibernie tenen-
di parliamentum. In primis.

Summonitio.

Summonitio Parliamenti precedere debet per qua-
draginta dies ante primum diem Parliamenti.

Summonitio Clericorum.

Summoniri & venire debent ad Parliamentum
omnes Archiepiscopi Episcopi Abbates Priores et alij
Clerici qui tenent per tenuram Comitatus vel Ba-
ronie integre & nulli alij minores rustibus propriis
causa tenure sue.

Item Summoniri debent Archiepiscopi E-
piscopi Abbates Priores Decani & Archidiaconi
exempti & alij privilegij qui habent Jurisdictionem
quod ipsi de assensu Cleri pro quolibet Decanatu &
Archidiaconatu Hibernie & pro seipsis Decanis & Ar-
chidiaconis facere eligere debent duos sapientes &
competentes procuratores pro ipsis Archidiaconatibus
adveniendum & essendum ad Parliamentum ad re-
spondendum supportandum allocandum & faciendum
quod quilibet & omnes de decanatibus & Archidia-
conatibus facerent vel faceret si personaliter interes-

sent vel interesset & quod procuratores veniant cum
varentis suis duplicatis sigillatis sigillis su-
periorum suorum unde unum deliberetur Clerici
Parliamenti irrotulandum & aliud secum remaneat.

Summonitio Laicorum.

Summoniri & venire debent omnes Senatores &
quilibet comes & Baro & Pares eorum videlicet qui
habent terras redditus ad valenciam unius comitatus
integri quod viginti feoda militum quolibet compu-
tato ad vigin. libras que faciunt CCCC vel valorem
Barone integre (vizt. tresdecem feoda militum & ter-
tiam partem feodi unius militis que faciunt CCCC
marcas & nulli minores Laici vel Clerici cuiuslibet pro-
prij causa tenure sue nisi Rex summoniat consili-
arios suos vel alios sapientes ex necessaria causa qui-
bus mittere solebat precando eos cuiuslibet ipsius
Regis venire & esse in Parlamento suo.

Milites Comitatum

Item per breve rex mittere debet cuiuslibet senescallo
libertatum & cuiuslibet vicecomiti suo Hibernie quod fa-
ciant eligere quilibet de assensu communis liber-
tatis et comitatus sui duos Milites competentes ho-
nestos & sapientes adveniendum ad Parliamentum
ad respondendum supportandum allocandum & facien-
dum quod omnes & quilibet communis libertatis
& Comitatus facient vel faceret si personaliter in-
teressent vel interesset. Et quod milites veniant cum
varentis ut predictum est de procuratoribus & quod
sine licentia Parliamenti non discedant a Parlia-
mento et post licentiam habeant breve directum senes-
callo vel vicecomiti quod faciet dictos Milites suos
habere de communitate sua rationabiles cultus & ex-
pensas suas a die remotionis eorum versus Parlia-
mentum usque rationabilem diem quo ad propria re-
venire a Parlamento potuerunt. Et quod expense
non excedunt unam Marcam de duobus militibus per
diem.

Cibes & Burgences.

Item eodem modo mittendum est Majoribus Val-
libis prepositis Civitatum & Burgensibus de tran-
seis quod de communi assensu Communium suorum e-
ligant duos cibos vel Burgenses, &c. ut dictum est
supra de Militibus & quod expense duorum cibium
vel Burgensium non excedant dimid. Marce —
per diem.

Principalis Clericus.

Item quod Rex inveniet custibus suis principalem
Clericum Parliamenti ad irrotulandum communia
placita & negotia Parliamenti qui tantummodo —
subjectus erit sine medio Regi & Parlamento suo in
communi & quum pares Parliamenti sint assignati ad
examinandum petitiones per seipsos & sunt concordēs
in iudicio suo tunc Clericus predictus repetet petiti-
ones & processus super ipsos & Pares reddent iudici-
um in pleno Parlamento. Et iste Clericus sedebit
in medio loco Iustic.

Item quod Iustitarius nullus sit in Parliamen-
to nec habet per ipsum recordum fieri in Parlamento
nisi nova portitas ei assignetur per Regem & Pares
Parliamenti in Parlamento & dictus Clericus de-
liberabit rotulos suos in Thesaurum ante finem Par-
liamenti.

Clericus Parliamenti

Item Rex assignare solet custibus suis unum bo-
num Clericum probatum ad scribendum dubitatio-
nes & responsiones quas Archiepiscopi & Episcopi fa-
cere voluerint Regi & Parlamento, & secundum
Clericum procuratoribus eodem modo tertium vero
Comitibus Baronibus & Paribus eorum eodem modo
quartum Militibus libertatum & Comitatum &
quintum Civibus & Burgensibus qui Clerici semper
predictis erunt meorum consiliis intendentes quod si
vacaverint vel aliquis eorum vacaverit adjuvare de-
bent

vent principalem Clericum ad interrogandum & ad minus assignare debet unum dominis & communibus spiritualibus & alium dominis & communibus temporalibus etiam Rex assignabit cum quolibet predictorum Clericorum unum Hostiarium & unum Clamatozem,

Gradus Parliamenti.

De Rege solo est primus gradus Parliamenti quia est caput commensor & finis Parliamenti secundus gradus de Archiepiscopis Episcopis Abbatibus Prioribus & paribus eorum per Comitatum vel Baroniam tenentibus est Tertius Gradus est de procuratoribus quartus gradus est de comitibus Baronibus & eorum paribus Quintus gradus est de mililibus libertarum & comitatum Sextus Gradus est de Civibus & Burgensibus & si contingat quod aliquis dictarum graduum excepto Rege absens a Parlamento fuerit nihilominus Parliamentum iudicatum est esse plenum.

De presentia Regis & absentia eius

Rex tenetur semper esse in Parlamento personaliter ni infirmitate impediatur & tunc infra manerium vel villam Parliamentum debet esse & mittere debet pro duobus Episcopis duobus Comitibus duobus Baronibus duobus Mililibus Comitatus duobus Civibus & duobus burgensibus ad videndum personam suam & testificandum statum suum in quorum etiam presentia committere debet Archiepiscopo loci Comiti Terre & capitali Iustituario suo, quod incipiant & continuant Parliamentum nomine suo & Rex absentare non potest ni modo & causa supradictis ni sit ex assensu Parium Parliamenti.

Sessiones in Parlamento

Rex sedebit in medio principalis Scamni & ad eius dextram Archiepiscopus loci Præmarchanus vel Dublin & si extra eorum limites Parliamentum sit tunc

tunc a dexteris Regis Archiepiscopi Armach & Caelen & a sinistris Regis Archiepiscopi Dublin & Tuamen deinde vero a dextris Episcopi Abbates Priores in secunda formula secundum ordinem a sinistris in formula Comites Barones et eorum Pares secundum ordinem ad pedem dexterum Regis sedebit Cancellarius Capitalis Iudiciarius cum suis sociis & eorum Clericis, & ad pedem sinistrum sedebunt Thesaurarius & Camerarius & Barones de Scacario: Iustitarii de Banco & eorum Clerici si sint de Parlamento deinde procuratores terre sedebunt.

Amerciamenta Absentium.

Rey cum Consilio suo tenetur esse primo die in Parlamento & quarto die omnes summoniti ad Parliamentum erint vocati & eorum defectus recordatur & per considerationem Regis & omnium Parium Parliamenti amerciamenta defectuum taxata.

Dies & bore Parliamenti.

Parliamentum non debet teneri diebus dominici nec die omnium sanctorum nec die animarum nec in nativitate Sancti Johannis baptiste omnibus illis diebus Rey cum Gradibus Parliamenti debent esse in Parlamento media hora ante primam. Festivibus vero diebus propter servitium divinum ad horam primam & sit Parliamentum in aperto loco semper.

Ordo deliberand. Parliamentum.

Petitiones sint assilati sicut deliberantur & sic per Ordinem legantur & responderantur (viz) primo determinantur que ad guerram pertinent postea de persona Regis & Regine & principis sui ac Gubernatione eorum & postea de communibus negotijs terre sicut est delictibus faciendis & emendandis videlicet originalibus judicialibus & executorys post Judicium reddit & postea singulares petitiones secundum quod sunt super filatoria & primo die Parliamenti sit proclamatio facta in villa & in loco Parliamenti quod omnes qui querelas
vri

vel petitiones velint deliberare Parlamento id quod
faciant infra quintum diem sequentem.

Inceptuo Parliamenti.

Quarto die Parliamenti vel quinto predicatio fiat
ab aliquo solemnī Clerico ejusdem Diocesis & post
predicationem Cancellarius vel alius sapiens & elo-
quens ac honestus pro Cancellario electus monstrabit
causas Parliamenti primo generaliter & postea specia-
liter stando. Quia quilibet loquens in Parlamento
tenetur stare loquendo excepto Rege ut ab omnibus
audiat & post promotionem Parliamenti Rex debet
precare Clericos & Laicos quod quilibet in suo gradu
diligenter studiose & corditer laboret ad tractandum &
deliberandum negotia Parliamenti sicut principaliter
intendunt hoc esse primo ad voluntatem Domini et
postea ad honorem & proficuum Regis & ipsorum pre-
sentium.

De Adjutorijs postulandis.

Rex non solet petere auxilium de populo suo nisi pro
guerra sua existente vel filiabus maritandis que peti-
tiones in pleno parlamento debent in scripto delibe-
rari cuilibet gradui parlamenti & in scripto respon-
deri unde sciendum est quod in talibus concessionibus
necessarium est ut majores partes cujuscunque status
sint ad hoc consentientes & sciendum quod duo milites
electi habent plus vocis in concedendo vel negando
pro Comitatu suo quam Comes ejusdem Comitatus
& eodem modo procuratores Clericorum plus Epis-
copis suis in concedendo vel negando quod apparet.
Quia Rex cum Comunitate sua potest tenere parla-
mentum sine Episcopis Comitibus & Baronibus si
rationabiliter summoniti non veniant quis aliquan-
do fuit quod non fuerunt Episcopus Comes nec Baro,
& tunc Reges tenebant parliamentum & si Comunes
Clericorum & Laicorum sint summoniti modo debito ad
Parlamentum & pro rationabili causa venire nolunt
similiter

similiter si assignaverint specialiter causas in quibus Rex eos non recte gubernabit tunc Parliamentum tenebitur pro nullo quambis alij status ibidem plenarie intersint & ideo necessarium est quod in omnibus concedendum & faciendum affirmandum & donandum per Parliamentum quod sint concessa per communes parliamenti qui constant ex tribus gradibus videlicet de procuratoribus Clericorum Militibus Comitatum Civibus & Burgensibus & quilibet parium parliamenti est pro seipso in parlamento & omnes pares parliamenti sunt Iudices & Iustitiarj in parlamento & sedebunt ni quum loquuntur. Communes vero sunt querentes & necessitatibus subvenientes & stabunt.

Judicium casus dubii.

Si dubius casus vel durus guerre vel pacis in terra advenierit vel extra terram Ita causa sit scripta in Parlamento pleno & sit ibidem inter partes parliamenti disputata & tractata & tunc si necesse per Regem injungatur cuilibet gradui quod ear quilibet gradus per se habens Clericum cum causa scripta ubi recitabunt causam Ita quod Ordinet & considerent inter eos in quo meliori modo et iusto procedere possunt in casu illo sicut pro persona Regis & seipso ac pro quibus presentes sunt velint coram Deo respondere. Et sic responsiones eorum in scriptis repozrent ut omnibus responsionibus et consilijs auditis secundum melius consilium procedatur sicut si sit discordia inter Regem et alias Magnates par terre scilicet fuerit vel inter populum Ita quod videretur parlamento quod talis causa sit per omnes gradus terre tractanda et per eorum considerationem emendanda vel si per guerram Rex et terra turbetur vel si durus casus coram Cancellario vel Iustitiarjo aut dorum judicium advenierit vel aliquis alius similis casus et si in talibus deliberationibus omnes vel saltem major pars

pars cujuscunque gradus non consenserint tunc de quolibet gradu Parlamento excepto Rege eligatur unus qui omnes vel eorum tres ad minus eligant duos Episcopos tres procuratores pro toto clero duos Comites tres Barones quinque Milites Comitatum quinquaginta et quinque Burgenses qui faciunt sex personarum in ipsis & ipsi sex in tres & condescendere qui a se ipso descendere non potest, cujus ordinatio erit pro toto Parlamento nisi in altero ipsorum potest condescendere major numerus concendere possit salvo Rege et consilio etiam quod ipsi tales ordinationes postquam scriptum fuerit examinare et corrigere si sciverint, possint in pleno parlamento et non alibi et hoc ex Parlamento assensu. Transcript.

Transcriptum.

Clerici Parliamenti non denegabunt alicui transcripta vel processum aut recordum parliamenti qui solvere voluerint pro quibuscunque decem lineis continentibus decem pollices in longitudine que est mensura rotuli parliamenti unum denarium.

Perjurus Rex.

Parlamentum erigendum in loco competenti terre que Regi placuerit & parlamentum non debet de-partiri quando aliqua petitio est pendens non determinata quod si Rex contrarium fecerit perjurus est & parlamentum non debet adjournari nisi de consensu omnium parium parliamenti & de omnibus gradibus parliamenti nullus solus potest nec debet decedere a parlamento sine licentia Regis & omnium parium parliamenti & hoc in pleno parlamento.

De fine Parliamenti

Ita quod inde fiat mentio in rotulis parliamenti & si aliquis parliamenti durante parlamento infirmitate detineatur ita quod parlamento accedere non possit tunc infra quartum diem mittat excusatores parla-
mento

mento quo die si non venerit mittantur ei de paribus suis ad videndum & testificandum infirmitatem suam per recordum eorum sit excusatus vel in misericordia pro defectu quod suspicio facta infirmiter sit tunc mittat aliquem sufficientem coram ipsis ad essendum pro ipso in parlamento quia sanus & sana memoria non potest excusari ad departitionem parlamenti primo demandari et Proclamari debet aperte in parlamento si aliquis deliberaverit petitionem parlamento cui factum non est responsum, & si nullus reclamare est supponendum quod cuilibet petitioni medicina rationabilis facta est et tunc Cancellarius vel alius assignatus per Regem & parlamentum debet dicere alta voce nos damus parlamento licentiam dissolvi & sic finitur parlamentum.

De Consilijs.

Et etiam Rex vult quod eadem forma in consilijs per summonitionem factam obserbetur excepto quod pro rege & legibus in ipsis consilijs erunt ordinationes in Parlamento vero Statuta.

Constitutio Justic. in Hibernia.

Et etiam Rex vult ut absente Rege a dicta terra sine procuratore ejusdem terre quocunque alio nomine sententur.

F I N I S.